



CLOSED CASE SUMMARY

ISSUED DATE: MARCH 23, 2022

FROM: INTERIM DIRECTOR GRÁINNE PERKINS
OFFICE OF POLICE ACCOUNTABILITY

CASE NUMBER: 2021OPA-0348

Allegations of Misconduct & Director's Findings

Named Employee #1

Allegation(s):		Director's Findings
# 1	5.001 - Standards and Duties 5.001-POL 2. Employees Must Adhere to Laws, City Policy and Department Policy	Not Sustained (Unfounded)
# 2	5.002 - Responsibilities of Employees Concerning Alleged Policy Violations 5.002-POL 8. Employees Will Report Certain Events	Not Sustained (Lawful and Proper)

This Closed Case Summary (CCS) represents the opinion of the OPA Director regarding the misconduct alleged and therefore sections are written in the first person.

EXECUTIVE SUMMARY:

It was alleged that while off duty, Named Employee #1 (NE#1) may have pointed a firearm at an individual and threatened to kill the individual. It was further alleged that NE#1 may have failed to self-report the criminal investigation into this incident.

ADMINISTRATIVE NOTE:

OPA opened this investigation after receiving a Blue Team referral from NE#1's Chain of Command regarding this incident. OPA's investigation was then tolled until the conclusion of the underlying criminal investigation, which was conducted by the Auburn Police Department. Based on the results of the criminal investigation by the Auburn Police Department as well as review by the Pierce County Prosecuting Attorney's Office, OPA requested that the OIG certify this case for Expedited Investigation.

This case was designated as an Expedited Investigation. This means that OPA, with the Office of Inspector General's review and approval, believed that it could reach and issue recommended findings based solely on its intake investigation and without interviewing the involved employees. As such, OPA did not interview the involved employees in this case.

SUMMARY OF INVESTIGATION:

On the evening of July 19, 2021, NE#1 was exiting a restaurant with a friend, whereupon NE#1 and the friend walked toward their respective vehicles. While NE#1 approached his vehicle, he noticed that the vehicle adjacent to his own was running. NE#1 looked inside this vehicle, at which point the driver (the Subject) inquired as to NE#1's purpose. Although the content of NE#1's response was disputed, both NE#1 and the Subject agreed that NE#1 responded to



the Subject's query and then proceeded toward his own vehicle. NE#1 entered his vehicle and sat inside of it, after which point in time a verbal altercation arose between the Subject and NE#1; two other witnesses were on scene at this time.

According to one of the witnesses, a restaurant employee, she was walking through the restaurant parking lot, during which time she observed two men seen nearby engaging in an altercation. The employee described there being three cars in the vicinity of the altercation, with one man (the Subject) seen standing outside his car and the other man (NE#1) seated within his own vehicle. The third vehicle was operated by a female, who parked near the two men, exited her vehicle, and approached the scene. Although the employee could not make out the nature of the altercation, it appeared that the Subject was yelling at NE#1 while standing next to NE#1's driver door. The employee had no further information regarding this incident.

The other witness, NE#1's friend, stated that she had approached the vehicles of NE#1 and the Subject, where she observed the altercation escalating between the two men. NE#1's friend stated that the Subject had exited his vehicle and was yelling at NE#1, who was seated within his own vehicle. In response to this situation, NE#1's friend stopped her car nearby the vehicles of the two men and exited, then approached NE#1's vehicle and asked the Subject to return to his own vehicle. Although the Subject did return to his vehicle, NE#1 and the friend described the Subject as reaching inside to extract something, then placing the object inside of his pocket. After taking this action, the Subject walked back in the direction of NE#1's vehicle.

In response, NE#1 took his personally owned firearm from the center console of his vehicle, racked a round into its chamber, then placed the handgun on his lap. NE#1's friend heard the sound of NE#1 racking a round, then looked toward NE#1 and saw a handgun situated on NE#1's lap. Although the Subject alleged that NE#1 pointed the handgun at the Subject and threatened to kill the Subject, this is contested by both NE#1 and NE#1's friend. NE#1 stated that he advised the Subject that he was in possession of a firearm, then asked the Subject to step away from NE#1's vehicle. Although the Subject complied with this request, NE#1 and NE#1's friend indicated that the Subject stopped at the back of NE#1's vehicle before returning to his own car, appearing to record the license plate of NE#1's vehicle.

Once the Subject had returned to his own vehicle, NE#1's friend returned to her vehicle and left the scene, with NE#1 leaving shortly thereafter. Remaining on scene, the Subject called 911 to report that NE#1 had pointed a firearm at him and had left the scene. The Subject also described NE#1's vehicle and license plate. Auburn Police responded to the scene and took the statement of the Subject, who described NE#1 as having pointed the firearm at the subject while threatening to kill the Subject. After verifying the identity of NE#1, Auburn Police reached out to the Seattle Police Department to inform NE#1's employer of their investigation.



ANALYSIS AND CONCLUSIONS:

Named Employee #1 - Allegation #1

5.001 - Standards and Duties 5.001-POL 2. Employees Must Adhere to Laws, City Policy and Department Policy

The Subject alleged that NE#1 pointed a firearm at the Subject and threatened to kill the Subject.

SPD Policy 5.001-POL-2 requires that employees adhere to laws, City policy, and Department policy.

This incident was thoroughly investigated by the Auburn Police Department and then reviewed by the Pierce County Prosecuting Attorney's Office. The Auburn Police Department concluded there were "insufficient facts to support probable cause" and, for very similar reasons, the Pierce County Prosecuting Attorney's Office did "not find sufficient evidence to charge (NE#1) with any crime." Both of these agencies noted that the Subject's allegations were not only uncorroborated but were contradicted by the statements of NE#1, NE#1's friend, and the independent witness (restaurant employee). Specifically, the Subject initially stated that he never exited his own vehicle during his confrontation with NE#1. However, the restaurant employee stated that she saw the Subject standing outside his vehicle "yelling" at NE#1, who was seated in his car. The restaurant employee also stated that the Subject appeared "mad" and kept telling NE#1 to get out of his car. When confronted with the evidence contradicting his original statement, the Subject changed his story. Although, there was no video evidence to corroborate either account, NE#1 was fully cooperative with the investigation and two witnesses—one of whom was free of any bias—corroborated NE#1's version of events. Like the Auburn Police Department and Pierce County Prosecuting Attorney's Office, OPA finds that the evidence supports NE#1's version of events.

For these reasons, OPA recommends that this allegation be Not Sustained – Unfounded.

Recommended Finding: **Not Sustained - Unfounded (Expedited)**

Named Employee #1 - Allegation #2

5.002 - Responsibilities of Employees Concerning Alleged Policy Violations 5.002-POL 8. Employees Will Report Certain Events

OPA alleged that NE#1 failed to self-report the criminal investigation into the aforementioned incident, as required by SPD Policy.

SPD Policy 5.002-POL-8 requires employees to report when they are the subject of an order of protection, the subject of a criminal investigation, or have their driver's license restricted or suspended. The reporting must occur as soon as practical, but before the start of the employee's next work shift. (SPD Policy 5.002-POL-8.)

In this case, NE#1 and the Subject were involved in an incident, after which point NE#1 left the scene. The Subject remained on scene and called 911, with Auburn Police responding to the scene to interview the Subject. Once the identity of NE#1 was determined by Auburn Police, officers reached out to NE#1's employer, the Seattle Police Department. It was decided that Auburn Police would travel to NE#1's residence to interview NE#1, then take NE#1 into custody if so needed. However, Auburn Police were unable to travel to NE#1's residence the evening of the incident. Auburn Police also determined that the alleged offence did not meet the booking standards of the county



jail. Auburn Police made contact with NE#1 via telephone the following day, and NE#1 was served with Administrative Leave paperwork the next day, his first day in office after being on furlough.

Although OPA was unable to find documentation that NE#1 notified his chain of command of Auburn Police's criminal investigation into the incident, OPA also found no reason to believe that NE#1 was aware of the investigation until the day following the incident. By this time, Auburn Police had already made contact with NE#1's chain of command and the chain of command had already decided to place NE#1 on administrative leave as soon as NE#1 returned from furlough. Given these circumstances, OPA finds that the self-reporting requirement was superseded by Auburn Police's contact with NE#1's chain of command.

For these reasons, OPA recommends that this allegation be Not Sustained – Lawful and Proper.

Recommended Finding: **Not Sustained - Lawful and Proper (Expedited)**